

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

| | | |
|--------------------------|---|------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| |) | |
| v. |) | No. 3:19-CR- 220 |
| |) | |
| |) | JUDGE VARLAN |
| TEVEA KEON STEWART |) | |

SENTENCING MEMORANDUM

Comes now the Defendant, Tevea Keon Stewart, by and through undersigned counsel and pursuant to EDTN Local Rule 83.9(k), United States v. Booker, 125 S.Ct. 738 (2005), and other authorities, and respectfully submits the following Sentencing Memorandum for the Court's consideration. Mr. Stewart is currently scheduled to be sentenced on April 8th, 2021.

Objections to the presentence report:

Specifically Mr. Stewart objects to the two (2) level increase in his base offense level in paragraph 40, rage 8 because "firearms were seized from the defendant's home on February 6, 2020, following a search warrant." Mr. Stewart's asserts that there were several people in the house in question at the time the search warrant was executed. That no weapon was related to Mr. Stewart nor found with him. That the Government charged three co-defendants, Cornelius, Johnson and Whittenburg with 924(c) counts but did not charge Stewart with any weapons count. His plea agreement merely says weapons were found not that there was any proof that Stewart was connected to any weapon and again, the Government did not charge him with any weapons count. The application of this "enhancement" would mean that this young man with

ZERO criminal history points and charged for distribution of marijuana in a meth case and not as a leader or organizer is ineligible for safety valve reduction. More importantly, with this enhancement he would not be allowed to fully participate in and receive the benefit of the BOP's drug treatment program which the report clearly reflects would benefit Mr. Stewart.

In the PSR and the plea agreement in this case, the parties AGREED that Mr. Stewart would be held responsible for a base level 24. Clearly when the parties choose to agree on something they knew how to do that. In this case the mere mention of guns being found where others were also present in not an agreement that Stewart possessed the gun.

As discussed in the following section and as this Court is well aware, the United States Sentencing Guidelines are no longer mandatory. Given that the enhancement is part of the non-mandatory guidelines the Court should look to the other factors in 18 U.S.C. Sec. 3553(a) factors and decline to apply this enhancement.

Sentencing:

With the Booker excision of the mandatory nature of the Sentencing Guidelines as required by 18 U.S.C. § 3553(b)(1), the guidelines should be viewed to be of subordinate impact to the other provisions of § 3553(a) or at best of equal import when the guidelines do not contradict other provisions within the statute. The Supreme Court was clear about the status of the guidelines: "So modified, the Federal Sentencing Act... makes the Guidelines effectively advisory." United States v. Booker, 125 S.Ct. at 757. It is particularly noteworthy that the requirement of the Supreme Court rationale that a judge *must* consult, and that a sentence *requires* consideration of, the sentencing guidelines - is derived from the language of §3553(a). Id. The nature and tone of the wording in the Supreme Court's rationale is equally important. The Supreme Court stated that the guidelines should be "consulted" and "considered... in light of

other statutory concerns...” not that the guidelines should carry a greater, let alone more substantial, weight than the remainder of the Sentencing Reform Act. Id.

Since the basis in Booker for a requirement to consult the federal sentencing guidelines is derived from its status as one of the factors within 18 U.S.C. 3553(a), the Booker decision makes it clear that a court is required to consider all § 3553(a) factors in its determination of the defendant’s sentence including, not subordinate to, the federal Sentencing Guidelines.

A. The Sentencing Guidelines are subordinate to 18 U.S.C. § 3553(a)

The Sentencing Reform Act is quite explicit about the role of 18 U.S.C. § 3553(a) in sentencing determinations. 18 U.S.C. § 3582(a) specifically states:

The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation.

Further, 18 U.S.C. § 3661 provides that:

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purposes of imposing an appropriate sentence.

The sentencing mandate is the overriding principle of Section 3553(a). The mandate requires courts to impose a sentence “sufficient, but not greater than necessary,” to comply with the four purposes of sentencing set forth in Section 3553(a)(2). (Emphasis added). The four purposes of 3553(a)(2) are:

(A) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment;

- (B) the need to afford adequate deterrence to criminal conduct;
- (C) the need to protect the public from further crimes of the defendant; and
- (D) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

The sufficient-but-not greater-than-necessary sentencing mandate is often referred to as the “parsimony provision.” The parsimony provision is not just another “factor” to be considered along with the others set forth in § 3553(a). It sets an independent limit on the sentence a court may impose.

In determining the sentence minimally sufficient to comply with the § 3553(a)(2) purposes of sentencing, the court must consider several factors listed in § 3553(a). These factors include (1) “the nature and circumstances of the offense and the history and characteristics of the defendant;” (2) “the kinds of sentence available;” (3) the guidelines and policy statements issued by the Sentencing Commission, including the (now non-mandatory) guideline range; (4) the need to avoid unwarranted sentencing disparity; and (5) the need to provide restitution where applicable. 18 U.S.C. § 3553(a)(1), (a)(3), (a)(5)-(7). Neither the statute nor Booker suggests that any one of these factors is to be given greater weight than any other factor. What is clear is that all factors are subservient to § 3553(a)’s mandate to impose a sentence not greater than necessary to comply with the four policy purposes of sentencing.

Under 18 U.S.C. 3553(a)(2) when this court considers the need for imposing a sentence given the nature of the offense, the need to deter both criminal activity in general and this defendant in particular.

Mr. Stewart would point out that, as the PSR reflects, he is a 22 year old man with

absolutely ZERO criminal history points reflecting not just minor crimes or old crimes but ZERO convictions prior to this case. (PSR paragraphs 56-63.) A rare situation for someone charged in federal court. This was clearly abhorrent behavior. He was not in any way alleged to have dealt in the methamphetamine or heroin involved in this case. He was ONLY accused of dealing in multiple packages of relatively small amounts of marijuana. While he recognizes that marijuana possession and distribution is illegal under federal law and Tennessee law, more and more states across the nation have and are moving to legalization of marijuana. While continuing to accept responsibility for his having broken the law it is also clearly a law that the democratic process continues to debate, change and amend.

When it comes to 3553 (a)(2) “the kinds of sentence available;” Mr. Stewart recognizes that it is very likely that this Court will sentence him to a sentence to serve. He agreed to a sentence with a base offense level of 24. With a three level reduction for acceptance and a criminal history of Category 1 that would mean a sentence of 37-46 months. Again, the nonmandatory guidelines say that if you are convicted of being in the business of distribution of illegal drugs you get a 2 level bump for using the money you get in your business. It would be hard to see how any distribution could be done without “money laundering” so essentially all sentences in drug cases are enhanced by 2 levels. Resulting in a sentence of level 23 category 1 or 46-57 months. Of course increasing the sentence by an additional 2 levels based his non-admission of possession of a firearm means level 25 and 57-71 months. The addition of the firearm “enhancement” means he losses the 2 level reduction for safety valve which would have returned him to a sentence of 37-46 months. The enhancement means that this Court is presented with a his first offender who faces either a five year mandatory minimum and loss of BOP programs intended to help him avoid such bad decisions in the future or three to four years

which would hardly depreciate the seriousness of the offense nor create unwarranted sentencing disparity (3553(a)(4)) while allowing him to participate in useful programs rather than an additional 1-2 years warehousing this first offender without those programs.

The Court has the multiple letters (see Attachment) from members of the community which express support for Mr. Stewart. His sister, Qiana Vinson, writes of their closeness growing up. Of her witnessing his non-violent nature. His sense of duty to his mother and siblings when his mother was involved in an abusive relationship. His position in the top ten percent of his high school class. And his remorse at the decisions that led him to the charges for which he is to be sentenced. (Letter of Qiana Vinson)

His "Aunt Sylvia" Rupert remembers his love of his church and how that is where he first experienced his vocal talent. She has known him since age 5 and describes him as a shy, quiet momma's boy. How he overcame obstacles in his young personal life to be a leader on his basketball team. Then to success writing, producing and recording his own songs. (Letter of Sylvia Rupert)

His mother recounts the "witty, charming, super smart, natural leader, loved by many" who was a protector to his sister and mother. A child of a single mother who didn't have much who was always thinking of how they could share what they did have with others. (Letter of Le'Sean Stewart)

In conclusion, Mr. Stewart would ask this court to consider this memo, the attached letters and the record in this case to find that the two level enhancement for possession of a firearm should not be applied in this case, most importantly for Mr. Stewart, so that he can benefit from the drug and alcohol treatment program in the BOP.

Respectfully submitted,

S/ Mike Whalen

Mike Whalen

BPR #018955

905 Locust Street

Knoxville, TN 37902

(865) 525-1393

CERTIFICATE OF SERVICE

I hereby certify that on March 26th , 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

Specifically, service is being made electronically to:

David Jennings
Assistant United States Attorneys
United States Attorney's Office

S/ Mike Whalen
905 Locust Street
Knoxville, Tennessee 37902
(865) 525-1393

**ATTACHMENTS TO THE
SENTENCING MEMORANDUM**

**LETTERS IN SUPPORT OF
TEVEA STEWART**

Qiana Vinson

2123 Davenport St

Chattanooga, TN 37406

(423) 227-7430

QianaVinson@gmail.com

March 22, 2021

Thomas A. Varlan

United States District Judge

800 Market Street, Suite 143

Knoxville TN 37902

Dear Honorable Judge Varlan,

I am writing on behalf of Tevae K. Stewart who is appearing before your court for distribution of marijuana on April 8th at 10am. I want to start by saying thank you for considering this character reference letter for Tevae.

I am Tevae's eldest and only sister. I have known him all of his 22 years. Since we were young children, Tevae and I have always shared a very close and loving relationship. I can remember thinking of Tevae as if he was my own child; we were so close. We still share that same relationship to this day. Tevae has always been a very mild-mannered, sweet, and loving individual. I can never remember him actually entertaining a fight or confrontation with anyone. Not even with myself as we went through the normal childhood sibling rivalry. He has always handled everyone with a gentle compassion.

Over the past few years Tevae began to suffer many losses. From seeing his mother in emotionally abusive relationships to losing very close friends that were like brothers to him to the streets. We lost 2 very special people in our family over the years and I believe that Tevae felt as if he had to "pick up the slack" for everyone else in the family. Watching him try and deal with these losses seemed to put him in a state of depression where he began to abuse drugs and alcohol temporarily. But after he saw how watching him try to cope brought us great pain, he decided to let the abuse of the substances go.

I am aware that Tevae has been charged with distribution of marijuana and how the public may view him being an entertainer, but I am hoping to communicate to you who he really is. As mentioned, he has always handled everyone with gentle compassion. And the community loves him as Hardaway 1K. I know that he would donate clothing, shoes, and money to those less fortunate and all the children recognize his gentle nature. I believe that the charges brought against him are very out of character for who Tevae Stewart really is. Even through high school Tevae graduated in the top 10% of his class and participated on the basketball team for a few years. He was very active in school unlike some of his peers that I know. Through conversations I have had with Tevae, he has shown great remorse and regret for the

charges that have been brought against him. Tevae has discussed with me about how he desires a different lifestyle after this period of his life and the goals that he wants to achieve once he is released.

I am not asking that you dismiss the case but to have grace and mercy in Tevae's sentencing. I ask that you attempt to see him in the way he truly is and not just how he seems to be. I thank you for considering my letter of character for my brother whom I love dearly.

Sincerely,

Qiana Vinson

Sylvia Rupert

243 Gum Hollow Rd,

Oak Ridge, TN 37830

865 385 3091

getitdoneright100@gmail.com

Judge Thomas Varlan

United States District Judge

800 Market St., Suite 143

Knoxville, TN 37902

Honorable Judge Varlan,

My name is Sylvia Rupert. I hold an MBA from Bristol University and I am currently retired from the federal government with 25 years of service as a Socioeconomic and Subcontract Administrator. I am writing this character letter on behalf of Tevae Stewart as a very close family friend. As a matter of fact, we are definitely more family than friends. I have known Tevae since he was five years old. I still refer to him as TaeTae and to him, I am Aunt Sylvia. Our families share a love bond. We have worshiped, laughed, and cried together over the years. Although we are not blood relatives, we are closer than many blood families.

Tevae has always had a strong sense of family and morals. The church has always been an anchor. Growing up he was happiest when he was playing, singing, or in worship with his sister (Qiana) and cousins (Duke and Tre). He was a bit quiet and reserved and by all intents and purposes was actually a moma's boy. Everyone who knows him knows that he dearly

loves his family; especially his inner circle; his mom, sister, granny and his children.

This family, including Tevae, is extremely gifted with awesome voices and musical prowess! Tevae has always had a voice of an angel; but earlier on getting him to sing was no easy feat. However, whenever he did, everyone in his presence was blessed. It wasn't until later that Tevae began to really embrace his vocal and musical talents. Your Honor it became a staple in his life.

Growing from a kid, I know this young man to be an overcomer! While his love for family was monumental, it did not mean there were not obstacles and hurdles in his path. In his developmental years, his mother and bonus dad separated and eventually divorced; his biological father was incarcerated for a while. However, Tevae stayed a positive course. He grew and became a leader in basketball and expanded his musical abilities. With graduation behind him in 2017, Tevae gave full-time laser focus to his love of music and successfully launched his rap career and production company. He wrote, produced, released, and performed his own music and quickly became an internet and mainstream success. So now, Your Honor, we have Tevae with the very same characteristics that once anchored him through so many previous storms finding his life now shipwrecked by the hype of that success and the eminent deep losses experienced from the same.

I am certain that these events have caused Tevae to face the stark reality that consequences and improvisations are definitely required even when they are encouched in different intent. Tevae is broken and very overwhelmed that due to his actions he and his family are experiencing the absence, separation, and shame that he has known so well from his personal occurrences! As a first-time offender, he is remorseful and committed not to continue any behavior that will cause further pain and divison.

Your Honor with the utmost respect for the law and due process, I humbly plead that mercy be extended to Tevae Stewart. I sincerely thank you for allowing me this opportunity.

Sincerely,

Sylvia Rupert

March 24, 2021

District Judge Thomas A. Varlan
United States District Judge
800 Market Street, Suite 143
Knoxville TN 37902

Dear Honorable Judge Varlan,

I am writing on behalf of Tevae Keon Stewart who is to appear before your court on April 8, 2021 at 10am. He is charged with and has plead guilty to distribution of marijuana. Thank you for considering my testament of his character.

My name is Le'Sean Stewart and I am a professional singer, administrator, worship leader, his mother but most of all, a woman of God. I instilled in Tevae a love for Christ and he accepted him at the tender age of 6 years old. He grew up serving in church and comes from a family of ministers and singers. It was only natural that Tevae followed suit.

Tevae's always been loving, kind, and protective of his only sister, myself, and those he loves. Medically diagnosed with ADHD, he was a hyperactive child, impulsive, and at times, misunderstood and felt picked on. He couldn't understand himself at times why he made certain decisions. He's always been witty, charming, super smart, a natural leader, loved by many but he also loves hard. He has a big beautiful heart and has always felt like he had to save everybody. He'd go to school and give away his shoes I bought to kids who were being bullied. He wanted to give Thanksgiving turkeys to the needy every year and give pizzas to the homeless. As a divorced parent, we didn't have much but he was always thinking of how we could share what we had.

Tevae excelled in his classes scoring in the top 12% in the region, worked hard and got placed on the varsity basketball team. He wanted to go to college to be a fashion designer but also discovered in high school he had a musical gift that had major possibilities after taking an audio production class. He was excited about music and became a national success. He loved making the kids happy by showing up to their schools, birthday parties, etc. Overwhelmed by love, hate from competitors, and grief from the loss of both my siblings; somewhere he took a wrong turn. Peer pressure and the desire to be accepted caused him to lose sight of the morals and values instilled in Him as a child. He clearly succumbed to the whispers of those who were not great influences.

I'm not excusing anything Tevae has done or blaming anyone because he made the decisions and has accepted responsibility for them. I'm not that mother. I just know he's not the monster he's being made out to be. Almost everyday for the past year, Tevae has expressed remorse to me regarding every mistake he's made. He wishes he'd taken the right path. He's felt the consequences/pain of his decisions and is determined to never be in this situation ever again. I

believe his eyes have truly been opened to the seriousness of what he's done and he has realized the importance of being on the right side of the law.

I respectfully ask the court for grace, for leniency, for a chance as a young man to start anew for him. He's changed his mind about doing what is right and has a beautiful 2yr old who needs a father. He has a strong support system including myself that will make sure he's on the right path to being a benefit and not a liability to the community. Thank you so much for your time and consideration.

Sincerely,

Le'Sean Stewart

To,
Thomas A. Varlan

United States District Judge
800 Market Street, Suite 143
Knoxville, TN 37902

March 20, 2021

Court Date: April 8, 2021, 10am

Subject: character reference letter for court

Respected authorities

My name is Ocioldred Reid, I am an in school suspension monitor for the Hamilton County Schools.

I am writing this letter as a character reference about Tae, who is my little cousin and I've known him all his life. I provide this reference in full knowledge of what Tae has been charged with.

I am confident enough to tell you that Tae is a family man, he loves all of us and didn't have an issue letting the world know about the love he has for us. We talk as much as my work schedule would allow. Allow me to say that I do know that Tae was charged with distribution of Marijuana but, this is not the person that I know. I spoke with Tae and he's upset about the charges he was accused of. He is sorry and I know that he would not object to seeking counselling. There's so much I could say about my little cousin, to know him is to love him as a person. Very respectful.

Thanking you

Ocioldred Reid (Cel)

OVERCOMING BELIEVERS CHURCH

Daryl W. Arnold, Senior Pastor

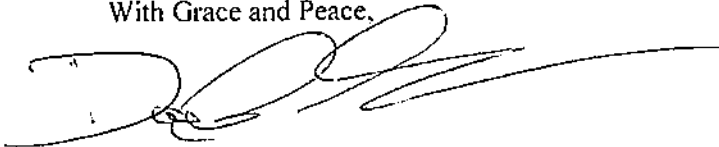
March 9, 2021

To Whom It May Concern:

This letter is written on behalf of Tevae Stewart. I realize that he has perhaps made some poor decisions in the past and has not operated in the best wisdom. However, I also know that his youth has played a major influence on his decision making. My prayer is that he has learned his lesson and is ready to live a productive life so that his community may benefit from his leadership.

He has a strong family support system and a significant core of people that will be voices of accountability and correction. My request is that you would consider showing a measure of mercy to him as the Lord has shown mercy to all of us. I thank you in advance for your prayerful consideration.

With Grace and Peace,



Pastor Daryl Arnold

Overcoming Believers Church
211 Harriet Tubman Street ~ Knoxville, TN 37915 ~ 865-635-9050 ~ office@overcomingbelieverschurch.org
"And they overcame him by the blood of the Lamb, and by the word of their testimony;
and they loved not their lives unto the death."
Revelations 12:11

Minnie Braden
827 North Germantown Road
Chattanooga, Tennessee 37411

To Whom It May Concern,

I am writing this letter in reference to my grandson, Tevae Stewart. Tevae is the first grandson for my husband, Pastor Clifton Braden, and I. Being the wife of a pastor, I have always instilled within our children values that we strive to live by daily.

For 22 years we have watched our grandson grow and mature. He loves his family and he often visited during birthdays, holidays and visits to Chattanooga. As the head of our family, Pastor and I have always instilled the love of family and God to our children, grandchildren, and great grandchildren.

We have watched Tevae grow in his love for music. That love for music has always been a part of his life. Both of his parents have imparted that love to him and his other siblings. Music is how he expresses himself. Music has been his outlet for when times are rough or uncertain in his life.

Tevae loves his family and his children. When he was child, we enjoyed spending time with him and now that he is a father, we enjoy seeing the love he has for his own. He is the first to make us great grandparents and we love it.

We are aware of his charges and we are praying for and with him. I have spoken with my grandson since his arrest and I pray with him. We pray that he leans on God for all his cares, worries, and direction for his life. That his life will be a path that his children will be proud their father took and shares with them.

We love our grandson and that extends to all our children, grandchildren, and great grandchildren.

Sincerely,

Miss'y Minnie Braden

From the Desk of Forestine Haynes
4909 North Moore Lane
Chattanooga, TN 37411
(423) 855-1202

March 18, 2021

The Honorable Thomas A. Varlan
United States District Judge
800 Market Street, Suite 143
Knoxville, TN 37902

Re: Tevae Stewart

Dear Judge Varlan,

This letter is being submitted as a character reference for Tevae Stewart who is coming before your court for sentencing consideration based on the charge of distribution of marijuana.

I am Tevae's aunt. His maternal grandmother is my older sister, and his mother (LeSean Stewart-Godfrey) is my niece and my sister's only surviving child. LeSean raised Tevae along with his sister, as a single (divorced) parent working hard to meet the needs of her children (physically, spiritually and emotionally).

Presently I am retired after more than forty years in the workforce. I retired in 2010 as the Executive Director for the 28th Legislative District Community Development Corporation. My professional background over those forty plus years included social work practice through the Tennessee Department of Human Service where I supervised a unit of professional caseworkers who worked with families in distress. My undergraduate degree is in Human Service: Social Work Practice from the University of Tennessee at Chattanooga (class of '74). I also served as the Public Guardian for Southeast Tennessee from 1987-1990 where I performed as the court appointed conservator for the disadvantaged aged. I covered nine counties. I also attended the Nashville School of Law while working full time, commuting from Chattanooga to Nashville three evenings per week and raising two children as a single (divorced) parent.

Tevae comes from a background of hard working, talented and upwardly mobile people. His mother attended Knoxville college on a music scholarship and graduated number one in her class. Tevae is also a bright and talented young man. While in high school he scored in the top 10% in the region on a math aptitude test. He was active in sports where he played basketball for two years. He demonstrated significant skills and determination to make the varsity team.

I recognize that Tevae is coming before you because he made a mistake in his life decisions that caused him to veer off the path envisioned for him; but he is young and definitely has the mettle it will take to realign his life into a productive, honorable, and useful citizen in the community. When we make mistakes there are three things we all should do about it: admit it, learn from it, and never repeat it. With that in mind Tevae's future can still be bright, filled with opportunities yet realized. It is my sincere hope that the court will take all this into consideration in determining the sentence to impose.

Sincerely,

Forestine Haynes

March 23, 2021

Thomas A. Varlan
United District Court Judge
800 Market Street suite 143
Knoxville, TN 37902

Your Honor,

I, Siseli Ivy, am writing to you to provide character reference about Mr. Tevae Stewart, whom I have known over a period of 15 years of being in this city to my children, serving in ministry with him at church and a sister in Christ to his mother.

I am in knowledge of Mr. Stewart's charges of Distribution of Marijuana. It is with total confidence that I have and can say many have contributed to this same offense that Mr. Stewart has. I know this young man to be very mannerable, polite, respectful, helpful and kind to his elders as well as the community. I, myself, have never seen him close to the influence of drugs of any kind.

I am well aware that he was on his way into the music industry to further his career where I believe he would succeed greatly in the industry.

I sincerely believe that Mr. Stewart is very remorseful and sorry for the choice he made and if he could rethink or redo it, it would never be so. I've prayed with this young man on several occasions. He has very strong, loving, supportive family & friends that would keep him in alignment and on course moving forward when given another chance toward his future.

In my best regards,
Thank you. May he receive more grace.
Siseli Ivy